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EDITED

BY

DHARM DAS SURI,

VAKIL, HIGH COURT, NORTH-WESTERN PROVINCES, AND PLEADER, CHIEF COURT, PUNJAB.

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THE CODE OF CIVIL PROCEDURE.

Together with Rulings, Circular Orders, Notifications, &c., of the High Courts in India, and Notifications and Orders of the Government of India and the Local Governments.

BY

DHARM DAS SURI,

VAKIL, HIGH COURT, N. W. P.,

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Apply to--

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the cancellation of a security bond which had been exacted under the provisions of section 9 of the Succession Certificate Act, VII of 1889. The District Judge's view is that there is no provision in the Act permitting the Court to interfere and direct the cancellation of a security bond, and in support of that view he has cited *I. L. R. XIX Bombay*, page 245. That ruling referred to a case in which a surety for the guardian of a minor's estate appointed under Act XX of 1864 applied to be released from his obligation as surety on account of the guardian's maladministration of the estate, and it was held that he could not be discharged. We think that the same principle should be applied in the present instance. It seems clear that the more likely a person who has obtained a succession certificate is to abuse his position as holder of the certificate, the more necessary it is that security should be given, in the interests of the debtors of the estate and others concerned, and when security has been required as a condition precedent to the granting of the certificate, the surety should not be relieved of his liability so long as the certificate holds good. Whether, however, the Court cannot afford him protection in some other manner is another question. In this connection it has been brought to our notice that the District Judge has not disposed of the other prayers contained in the application made to him, one of which was that the certificate granted should be revoked.

We are unable to direct the cancellation of the security, but we accept the petition for revision so far as to direct the District Judge to dispose of the other points raised in the application made to him. We make no order as to costs.

Application accepted.

Appellate Side. **No. 6.**

Before Mr. Justice Harris and Mr. Justice Rattigan.

GOKAL RAM,—(Defendant),—APPELLANT,

Versus

KAHANI RAM, &c.,—(Plaintiffs),—RESPONDENTS.

Case No. 417 of 1897.

Act XX *of* 1863, *Sections* 14 *and* 18—*Regulation* XIX *of* 1810—*Religious endowments—Suit to remove manager.*

Held, that Regulation XIX of 1810 was extended to the Punjab by general rules and orders of Government and that Act XX of 1863 is in force in the Punjab.

Held, also that the Court had power to decree removal of the manager of the temple on the plaintiffs' suit filed after sanction was given under Section 18, Act XX of 1863, although the sanction was not applied for by all the plaintiffs.

II C. L. R., 121 and 128, *P. R.*, 35 of 1871 and 75 of 1884, referred to.

Further appeal from the order of Alexander Anderson, Esquire, Divisional Judge, Kulu Sub-Division, at Dharmsala, dated the 3rd October 1896, *modifying the order of C. M. King, Esquire, District Judge, Kulu Sub-Division, dated the 23rd October* 1895.

Bakhshi Jaishi Ram, Pleader, for appellant.

Judgment.

17*th July* 1900. Harris, J.—Plaintiffs are 4 of the tenants of the land endowed on 2 Temples in Kulu of which temples defendant is the *Kardar* or manager. Two of the plaintiffs and some others applied to the District Judge to have defendant removed from the management on the ground of neglect and misappropriation of temple property. The District Judge took the application to be one under Act XX of 1863, and under Section 18 of that Act gave the applicants permission to sue. The present suit was brought in consequence of that permission and the prayer was for the money value of property belong-

ing to the temples which defendant was alleged to have misappropriated.

The First Court gave plaintiffs a decree for the major portion of their claim, and in addition, taking the suit to be one under Section 14 of Act XX of 1863, directed the removal of defendant from his post as manager.

In appeal to the Divisional Judge, it was held that defendant was not responsible for the loss of property but the order of removal of defendant from the managership was upheld.

It is from this last order that defendant has preferred this further appeal.

The main question for decision is whether Act XX of 1863 is applicable to this particular temple endowment.

A description of these endowments in Kulu will be found in pages 124-9 of Lyall's Settlement Report of the Kangra District, but is of no assistance in determining the above question.

In *P. R.*, 35 *of* 1871 it was assumed that Act XX of 1863 was applicable, while in *P. R.*, 75 *of* 1884 the question though raised, was not decided.

The Act itself is based upon Bengal Regulation XIX of 1810 as is evident from the preamble to the Act, and we are of opinion in accordance with the view expressed in *II C. L. R.*, 121 and 128 that though Section 14 of the Act is general in its terms, that Section is only applicable to endowments considered by the Act as a whole.

Further, though we consider that the absence of a prayer for removal of defendant would not prevent the Court from directing such removal under Section 14, it is clear that if the Act be inapplicable to the present case the Court was not competent to decree removal unless such was prayed for.

On the above view of the case the determination of this appeal turns upon the question whether Bengal Regulation XIX of 1810 was in force in the Punjab.

If it was not, then, we must hold that Act XX of 1863 is inapplicable.

In Schedule I Punjab Laws Act certain Regulations, not including No. XIX of 1810, were declared to be in force, while Schedule II repealed all other Bengal Regulations then in force in the Punjab. That seems to imply that there were possibly other Bengal Regulations in force in the Punjab, but it does not determine whether No. XIX of 1810 was in force in the Punjab when Act XX of 1863 was passed.

Regulation XIX of 1810 was enacted to be in force "throughout the provinces immediately dependent on the Presidency of Fort William."

The Punjab did not become part of British India until 1849, so it is necessary to determine whether the Regulation was extended to the Punjab. Nearly all that can be gathered as to express extension appears in the introductory remarks to the first edition of Smyth's Regulations and Acts applicable to the Punjab. Mr. Smyth concludes "It thus appears that though the general body of Laws in force in the Regulation Provinces was not introduced into the Punjab on annexation, the principles of these Laws were prescribed for guidance and ever since they have been followed in spirit so far as they have not been modified or superseded by local or special Laws, or rules issued by the Executive Government. A question of some difficulty however arises as to what were the Regulations the provisions of which were declared to be generally applicable to the Punjab. This point has never been definitely settled, and it has never altogether been free from doubt."

In Barkley's non-Regulation Law of the Punjab, published in 1871 prior to the Punjab Laws Act, Regulation XIX of 1810 is given as one of the Regulations applicable to the Punjab as being embodied in Directions to Collectors issued by Government (see Schedule III at page 421). Section 25 of the Indian Councils Act of 1861 gives the force of legal enactment to rules promulgated by Government.

The general nature of Act XX of 1863 is only restricted by the preamble to the Act, and that it has been throughout understood by the Punjab Government to apply to this Province is evidenced by several notifications thereunder. After consideration we are of opinion that the Regulation must be held to have been extended to the Punjab by general rules and orders which were given the force of law by the Indian Councils Act, and that Act XX of 1863 is applicable to this Province.

The endowment is one of the nature of those contemplated in the Act.

We are also of opinion that the suit was instituted after sanction given under section 18 of the Act on application, and that the facts that the application made no mention of the Act, and that all the plaintiffs were not applicants do not constitute defects vitiating the Court's order for removal of defendant from the managership.

It is urged here for defendant that no such misfeasance, breach of trust or neglect of duty has been established so as to justify the order. But we concur with the Divisional Judge who, while differing from the First Court as to defendant's liability for the embezzled temple property, has given good reasons for holding defendant guilty of connivance at his *Sarbarah* Phulnee's misappropriation. Defendant though appointed, apparently in succession to his father, at the age of 15 years, had been of age for several years when the suit was instituted and evidently had negleted his duty even if his action should not be held to be of a more criminal nature. For the above reasons we dismiss the appeal with costs.

Appeal dismissed.

APPELLATE SIDE. No. 7.

Before Mr. Justice Robertson and Mr. Justice Maude.

KANHAYA LAL,—(DEFENDANT),—APPELLANT,

Versus

NAND KISHORE,—(PLAINTIFF),—RESPONDENT.

Case No. 876 of 1897.

Custom—Adoption—Power to set aside—Kayasths of Rohtak.

Held, that no valid custom was proved under which a Kayasth of Rohtak could set aside adoption once made.

P. R., No. 15 *of* 1877, 17 *of* 1878 and 9 *of* 1893 referred to.

Further appeal from the order of S. Clifford, Esquire, Divisional Judge, Delhi Division, dated the 23rd day of June 1897, *reversing the order of Lala Sheo Pershad, Munsif, 1st class, Rohtak, dated the 21st day of April* 1897, *dismissing plaintiff's claim.*

Mr. Gurcharn Sing, Advocate, for appellant.

Lala Lajpat Rai, Pleader, for respondent.

JUDGMENT.

11th Decr. 1900. MAUDE, J.—We have considered the return made to our order of remand dated 18th May 1900, and we have heard Counsel.

Five instances are said to have been given of cases in which adoptions have been set aside, but we do not think that the evidence is at all sufficient to prove the existence of a valid custom under which Kayasths can set aside adoptions once made. The parties belong to the Rohtak District, and admittedly Hindu Law would govern the case in the North-West Provinces, and we consider that clear and definite proof is required to show that Hindu Law does not govern the present case. In one of the five instances given to prove the alleged custom there was clearly no adoption at all, but only an intention to adopt a particular person, which intention was abandoned. In the other instances the evidence is not sufficiently clear to show precisely what occurred. We think that it is quite impossible on such evidence to hold that a valid custom has been proved, and that we

should be justified in departing from the rulings of this Court to be found in *P. R.*, No. 15 *of* 1877, 17 *of* 1878 and 9 *of* 1893.

The appeal must therefore be dismissed with costs.

Appeal dismissed.

APPELLATE SIDE. No. 8.

Before Mr. Justice Robertson and Mr. Justice Maude.

GULAB SINGH, and five others,—(PLAINTIFFS),—

APPELLANTS,

Versus

Mussammat SUKHAN, and five others,—(DEFENDANTS),—

RESPONDENTS.

Case No. 328 of 1898.

Punjab Land Revenue Act, 1887, *Section* 158 *(2) (XVII)—Question of title.*

Where one of the co-sharers applied for partition to Revenue Authorites and the defendant a widow in possession of life estate consented to the partition which was granted and duly sanctioned, a suit by the reversioners to the widow's estate for a declaration that the partition was not binding on them after the widow's death was *held* not cognizable by Civil Courts. *P. R.*, 82 *of* 1898; F. B. distinguished.

Further appeal from the order of Kazi Muhammad Aslam, Divisional Judge, Lahore Division, dated the 23rd December 1897, *reversing the order of Sardar Muhammad Sarfaraz Khan, Additional District Judge, Lahore, dated the 19th July* 1897, *decreeing the claim.*

Mr. Oertel, Advocate, for appellants.

Lala Lal Chand, Pleader, for respondents.

JUDGMENT.

MAUDE, J.—The plaintiffs in this case are the reversioners of the deceased husband of *Mussammat* Sukhan, one of the defendants. Their suit is expressed to be one for a declaration that they shall not be bound after the death of *Mussammat* Sukhan by the private partition effected by her in respect of certain land which parti- *1st June.* 1900.

tion was sanctioned by the Revenue Authorities. The First Court decreed the claim, but on appeal the Divisional Judge reversed the decree and dismissed the plaintiffs' suit.

The plaint does not correctly state the claim, and the Divisional Judge has set out the real nature of it in his judgment. It was not *Mussammat* Sukhan who applied for partition, but it was Mangal Das (also defendant). He is admittedly a joint owner in the holding in question while *Mussammat* Sukhan holds on a widow's tenure. Mangal Das applied to the Revenue Authorities for partition and partition was effected and sanctioned in due course, the widow ultimately raising no objection. The plaintiffs' real contention is that Mangal Das has obtained the more valuable land and that the widow colluded in his so doing, it is not contended that Mangal Das has acquired a larger share of the holding than he was entitled to in virtue of the extent of his proprietary right.

Thus the suit clearly involves a "question connected with or arising out of proceedings for partition" and it appears to us to be necessary to determine whether or not a Civil Court had jurisdiction to entertain and decide the suit with reference to the provisions of section 158 (2) (XVII) of the Punjab Land Revenue Act. Counsel for the plaintiffs appellants relies on the Full Bench decision of this Court reported as *P. R.*, No. 82 *of* 1898 (Buta *versus Mussammat* Jiwani), but the facts of that case differ materially from those of the present one. There the widow holding a life tenure of her husband's land claimed partition of the *Khata* of which the joint owner was her husband's nephew. He denied her right to claim partition, and instituted a Civil Suit to have it declared that she had no such right. It was held that the suit would lie in a Civil Court, because the plaintiffs' contention was that the widow had not by custom the right to demand partition of the property, and therefore the claim amounted to an assertion that her title as owner was restricted in that respect. In the present case Mangal Das and not the widow applied for partition and he undoubtedly was entitled to do and partition

was effected in due course by the Revenue Authorities. We are unable to see that there is any question as to "title in any of the property." There is no question as to the extent of Mangal Das' title in the land partitioned, and none as to the nature of the widow's interest in it, what is attacked so far as we understand the learned counsel's argument, is her power to be a consenting party to the partition, but this we held to be something very different from questioning any one's title in the property within the meaning of section 158 (2) (XVII) of the Land Revenue Act. Possibly as has been contended, there was collusion on the widow's part in so far as she may have raised no objection to Mangal Das' obtaining the more valuable portion of the land, but the case of *Arjan Singh* versus *Sochet Singh and others* (*P. R.*, No. 52 *of* 1892) is authority for holding that the presence or absence of fraud makes no difference as regards the question of jurisdiction. The object of the present suit is to strike directly at the formal proceedings of the Revenue Authorities and to impugn the correctness of their method of partition, the claim is not to question the extent of the title of Mangal Das or of the widow in the land. For these reasons we hold that the Civil Courts had no jurisdiction to entertain the suit, we therefore concur with the Divisional Judge that the plaintiffs' suit must be dismissed, though not for the reasons given by him. The appeal is accordingly dismissed with costs, and the decree of this Court will be that the plaintiffs' suit be dismissed.

Appeal dismissed.

APPELLATE SIDE. No. 9.

Before Mr. Justice Maude.

Mussammat SARDARI,—(DEFENDANT),—APPELLANT,

Versus

CHIRANJI LAL and another,—(PLAINTIFFS),—

RESPONDENTS.

Case No. 736 of 1899.

Mortgage—Regulation XVII of 1806, *Section* 8—*Notice.*

Held, that it is not necessary that the actual wording of Section 8 of Regulation XVII of 1806 be reproduced in the notice word for word and that the use of words 'pay off' instead of 'redeem' did not invalidate the notice.

Miscellaneous further appeal from the order of A. E. Hurry, Esquire, Divisional Judge, Ferozepore Division, dated the 2nd April 1899, reversing the order of Pandit Hari Kishen, Sub Judge, 1st Class, Hissar, dated the 25th November 1898, dismissing the suit with costs.

Lala Lajpat Rai, Pleader, for appellant.

Mr. Madan Gopal, Advocate, for respondents.

JUDGMENT.

5th Decr. 1900. MAUDE, J.—The appellant's contention is that the notice of foreclosure was informal because in it the mortgagor was told to "pay off" the mortgage debt instead of being directed to "redeem" the mortgage. Otherwise admittedly the notice was in proper form. The regulation provides that that the notice should notify to the mortgagor "that if he shall not redeem the property mortgaged"...the mortgage will be finally foreclosed. No doubt the Courts have been very strict in requiring that the provisions of the regulation shall be strictly complied with, but I am not aware of any decision to the effect that the actual wording of the regulation must be reproduced in the notice word for word. The repayment of the mortgage debt means the redemption of the mortgage, and the notice issued in this instance fully informed the mortgagor of what he had to do under the provisions of the Regulation. I observe also that the point now raised was not raised in the First Court. I reject the appeal with costs.

Appeal dismissed.

REVISION SIDE. No. 10.

Before Mr. Justice Robertson.

SIDHU RAM,—(PLAINTIFF),—PETITIONER,

Versus

GAMAN,—(DEFENDANT),—RESPONDENT.

Case No. 2029 of 1899.

Civil Procedure Code 1882, *Section* 522—*Award—Decree in accordance with award—Defendant not appearing to file objections—Ex-parte decree.*

Where the defendant did not appear and file objections to an award, and decree was passed in accordance with the award under Section 522, Civil Procedure Code, the decree cannot be said to have been passed *ex-parte* and the order reviewing it was held to be illegal.

Petition under Section 70 (*b*) *Punjab Courts Act for revision of the decree of Mian Hussain Bakhsh, District Judge, Dera Ghazi Khan, dated the* 25*th August* 1899, *confirming the decree of Syed Wali Shah, Munsif,* 2*nd Class, Fazilpur, dated the* 3*rd August* 1899, *altering the form of decree passed by Lala Karm Chand, Munsif,* 2*nd Class, Fazilpur dated the* 12*th June* 1899.

Bakhsi Jaishi Ram, Pleader, for petitioner.

Mr. Shah Din, Advocate, for respondent.

JUDGMENT.

ROBERTSON, J.—The facts in this case are a little complicated. The case in question was referred to arbitration and an award was filed on 31st May 1899. When the award was filed, the plaintiff was present and the defendant was not present. The Court issued notice to the parties to file objections, if any, within ten days, and this was apparently served on defendant on 4th June. He stated that he was ill, and the peon bore this out. 12th June was fixed for hearing, and on 12th June plaintiff was present and defendant was not, and he Court proceeded to pass a decree in accordance with the award. The defendant was not present, but the decree does not purport to be an *ex-parte*, but to be one apparently under section 522, Civil Procedure Code, and

30*th May* 1900.

the judgement is stated to be one in accordance with the award "*hasb-e-faisla salisi.*" Treating this as an *ex-parte* decree the defendant applied to have it set aside on 27th June, and on, 8th July the Munsif, who was a different one from he who had passed the original order, passed an order rejecting the application and stating that it was not an "*ex-parte* decree" and could not be so treated, but suggested a possible application for review. On the 10th July 1899 an application was made for review and on 3rd August an order was passed by a new Munsif who had come in before 8th July as noted above reviewing the order of 12th June and declaring the decree to be *ex-parte*. Then the so called *ex-parte* decree was set aside by order of 5th August. That order was appealed against and the appeal was dismissed by District Judge on 25th August 1899.

Meanwhile the case went on, on 7th August the award was remitted for further consideration to the arbitrators who rejected their award on 16th August and on 22nd August the suit was dismissed in default for absence of plaintiff which order of dismissal was set aside and the case returned for trial on its merits by District Judge on 7th February 1900. These latter proceedings, however, do not affect the point now in issue before this Court.

This is an application for revision of the order of the District Judge passed in appeal from the order of the Munsif, dated 3rd August and 5th August, reviewing the original order of 12th June which was declared to be "*ex-parte*" and set aside. This was passed by District Judge on 25th August 1899.

Now it appears to me that the orders of the Munsif, dated 3rd August and 5th August, declaring the order of 12th June to be *ex-parte* and setting it aside was a material irregularity which material irregularity cannot be considered cured by the mere fact that the Lower Appellate Court failed to set it right on appeal. The procedure of the first Munsif Karm Chand who passed the decree of 12th June 1899

was qui correct. The award was duly filed, and ten days' notice for objections was duly given, and 12th June fixed for hearing. The notice was duly served on the defendant on 4th June, but he put in no objections and made no appearance either in person or by pleader or agent. The Court then under section 522 Civil Procedure Code, very correctly proceeded to give judgment according to the award. When an application was made on 27th June to set this aside as *ex-parte* the Munsif who had succeeded Karm Chand declined, and declared that the order was not *ex-parte*, but later he accepted an application for review, declared that the decree was *ex-parte* and set it aside. The Munsif, Wali Shah himself clearly found on 8th July that the order by Munsif Karm Chand was not an *ex-parte* decree, and he had clearly no jurisdiction to review it under section 624, Civil Procedure Code. The order was clearly intended for one under section 522 in accordance with the award and could not be reviewed into an *ex-parte* one by his successor and then set aside. The order being itself *ultra vires* and without jurisdiction the order of an Appellate Court upholding it could not make it good. The whole of the proceedings subsequent to the order of 12th June are therefore bad, and must be set aside, and are set aside accordingly and the order of the 12th June in accordance with the award filed on 31st May is restored. Costs against respondent.

Application granted.

APPELLATE SIDE. NO. 11.

Before Mr. Justice Rattigan and Mr. Justice Harris.

RUKAN DIN,—APPELLANT,

Versus

ILAM DIN, &c.,—(PLAINTIFFS)—
GHULAM MOHAMMAD,—
(DEFENDANT)— } RESPONDENTS.

Case No. 291 of 1898.

Custom—Pre-emption—Stranger—Father of one of the vendees owning land in the village.

Held, that a vendee who owned no land in the village must be regarded as a 'stranger,' although his father possessed land in it, and the other vendee having joined a 'stranger' in his purchase lost the right of pre-emption which he otherwise possessed—

P. R., 10 *of* 1884; 94 *of* 1895 and 82 *of* 1880 followed.

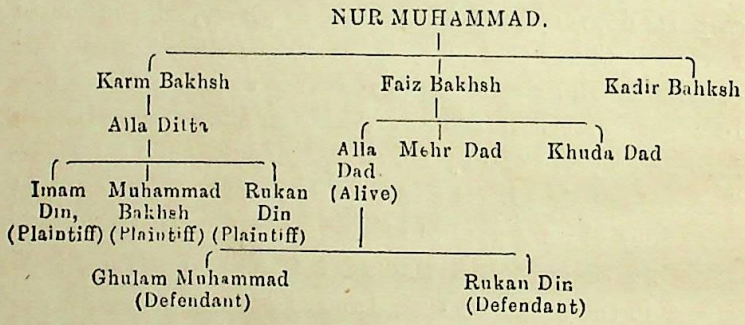
Further appeal from the order of Sirdar Gurdyal Singh, Man, Divisional Judge, Sialkot, dated the 3rd July 1897, *affirming the order of Bawa Mihan Singh, Munsif, 1st Class, Gujranwala, dated 30th March* 1897, *decreeing plaintiff's claim,*

Mr. Ganpat Rai, Advocate, for appellant.

Lala Lal Chand, for respondents.

JUDGMENT.

18th July 1900. RATTIGAN, J.—The parties are related as follows:—



Plaintiffs sue on the following allegation that on the 23rd January 1896, Sayad Muhammad and Karam Din sold 63 *kanals*, 17 *marlas* of land to defendants for an alleged consideration of Rs. 1,500, that the said land is situate on *taraf* Butran of the village in which *taraf* are (and their ancestors for several generations have been) proprietors; that plaintiffs are, moreover, joint proprietors with the vendors of the land sold; that of the two vendees Ghulam Muhammad is not a proprietor in the village or *taraf*, and hence plaintiffs have a right to pre-empt the land, and that of the alleged consideration of Rs. 1,500 only a sum of Rs 1,120 was actually paid to the vendors. Plaintiffs, therefore, claim pre-emption on payment of the last mentioned amount. Defendants plead that as Ghulam Muhammad is the brother of Rukan Din, the other vendee, who is

admittedly a proprietor, though by purchase, in the village, he cannot be regarded as a "stranger" the more especially as his father, Allah Dad, who is still alive, is proprietor of ancestral land in the village. They also pleaded that the full consideration of Rs. 1,500 was actually paid.

The Lower Courts have concurred in granting plaintiffs a decree conditional on the payment of Rs. 1,241, which they held to be the market value of the land, to the vendees.

On appeal before us, the first plea of the defendants has been considerably elaborated, and the argument now is, that inasmuch as Ghulam Muhammad is heir, with vested reversionary rights, to his father's property which is situate in the village, he must be considered for all practical purposes, as himself a proprietor therein, he having an inchoate right of ownership vested in him, which on his father's death will ripen into one of full proprietorship. As such proprietor in embryo, if the expression may be permitted, Ghulam Muhammad cannot, it is urged, be styled a "stranger" within the meaning of the decisions of this Court, reported as No. 10 *P. R.*, 1884 and No. 94 *P. R.*, 1895, which are distinguishable on this ground.

This argument is, in our opinion, founded upon an erroneous view of the law of pre-emption and of the *ratio decidendi* of the cases cited. For the purposes of the law of pre-emption, all persons fall under one or other of the two heads,—they are either (*a*) persons who have a right of pre-emption, or (*b*) persons who have no right of pre-emption, and the word "stranger" as used in the decisions of this Court was obviously intended to designate a person who fell within the latter category. In the case before us, Ghulam Muhammad is admittedly not a proprietor in the village, and it is important to keep in mind the fact that his brother and co-vendee bases *his* claim of equal pre-emptive rights with plaintiff on the ground, not of being the son of a proprietor in the village, but of being himself a proprietor by purchase in the village. The plea, as advanced before

us, is one very similar to that preferred by the defendant, Imam Ulla, in the case reported as No. 82 *P. R.*, 1880 (*Sher Singh* versus *Imam Ullah*), when it was contended that as a son has a community of interest with his father in ancestral property, he must necessarily be regarded as a "co-sharer" within the meaning of clause (*a*) of section 12 of the Punjab Laws Act. This Court however over-ruled the contention, and held that the son is not a co-sharer in any sense intended by the Act and was not entitled to claim pre-emption as such. Mr. Justice Rattigan, adverting to the argument that had been pressed on the Court, remarked—" At all events I do not think the expression 'co-sharer' in clause (*a*) of section 12 of the Punjab Laws Act, as amended, can be held to include a son or grandson, unless he has actually been associated as such by the ancestor in possession. Nor, in my opinion, could a son merely by reason of relationship and in the absence of any separate proprietary interest in the village, claim pre-emption under clause (*c*) of the same section, the first sentence of which, I think, although the disjunctive *or* between the words 'co-sharer' and 'relation' gives color to a contrary argument, was intended to refer back to the two preceding clauses, the first of which deals exclusively with co-sharers in joint undivided immoveable property, whether they happen to be relations or not, and whatever may be the description of the immoveable property involved, while the second is restricted to co-sharers in villages held as ancestral shares in the order of relationship. I cannot believe that clause (c) was intended by implication to confer a right of pre-emption on a relation (a term which might be indefinitely extended) irrespective of his holding any proprietary interest in the village in his own right."

We unhesitatingly accept this as the correct view of the law, and in accordance therewith decide that Ghulam Muhammad must be considered as a person who has no right of pre-emption. It follows, on the authority of the cases to which reference has already been made, that Rukan Din by joining with himself in the purchase of the land, a person who has no right of pre-emp-

tion, has placed himself in no better position than that held by the latter, and consequently plaintiffs as proprietors in the *taraf* are entitled to claim pre-emption in respect of the sale in question.

As to the question of consideration, we are of opinion that defendants have utterly failed to prove that a sum of rupees 1,500 was actually paid to the vendors. On the contrary their own witnesses establish the fact that no such sum was paid, while that part of the consideration which is alleged to have consisted of *rukkas* drawn by defendants on one Khan Ahmad, is shewn by the evidence of that person himself to be altogether fictitious. The non-production of the said documents strongly supports this view.

Under these circumstances we think that the valuation of the Local Commissioner should be accepted. He fixed the market value at Rs. 1,247, and the decrees of the Lower Courts fixing it at Rs. 1,241, are, for all practical purposes, in accordance with his estimate.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

REVISION SIDE. No. 12.

Before Mr. Justice Clark, Chief Judge.

DAURANA KHAN,—PETITIONER,

Versus

CROWN,—RESPONDENT.

Case No. 843 of 1900.

Penal Code 1860, *Section* 188—*Disobedience of illegal order.*

When the Deputy Commissioner ordered the accused to stop a canal and the order was disobeyed, *held*, that the order being *ultra vires*, the accused could not be convicted under Section 188, Indian Penal Code.

Petition for revision under Section 439 of the Criminal Procedure Code of the order of Major E. Inglis, Sessions Judge, Derajat Division, dated the 26th day of April 1900, upholding the order of A. J. Grant, Esquire, Deputy Commissioner, Bannu, dated the 5th March 1900, convicting the petitioner.

Mr. Duni Chand, Advocate, for petitioner.

JUDGMENT.

14th Augt. 1900 CLARK, J.—The facts are given in the order of the Deputy Commissioner dated 5th March 1900. I have referred to the order of the Deputy Commissioner of 6th January 1900, it does not profess to be under any provision of law, and the Deputy Commissioner was not lawfully empowered to promulgate such order; and to disobey the order was not an offence under Section 188 Indian Penal Code.

The Deputy Commissioner and Daurana Khan were in the position of litigants towards one another and when the Commissioner on appeal instructed the Deputy Commissioner to stop his canal: the Deputy Commissioner then ordered Daurana Khana to stop his canal. That is one litigant issued an order about the subject in dispute to his rival litigant The order was not a lawful ond and Daurana Khan was not bound to obey it. The revision is accepted and the fine remitted, it will be refunded if paid.

Application accepted.

REVISION SIDE. NO. 13.

Before Mr. Justice Clark, Chief Judge.

THE MUNICIPAL COMMITTEE, AMRITSAR,

COMPLAINANT—PETITIONER,

Versus

MUHAMMAD BAKHSH,—RESPONDENT.

Case No. 1041 of 1900.

Punjab Municipal Act XX of 1891, *Section* 92—*Building a 'chajja' without the sanction of the Municipal Committee.*

Held, that where for six weeks, no orders were passed on the application of the accused to build a 'chaubara' and 'chajja' he was rightly acquitted of the offence of building a 'chajja' without the previous sanction of the Municipal Committee.

Petition for revision under Section 439 of the Criminal Procedure Code, of the order of A. Langly, Esquire, District Magistrate, Amritsar, dated the 11th May 1900, reversing the order of Lala Gobind Ram, Magistrate, 2nd Class, Amritsar, dated the 7th March 1900, and acquitting the respondent.

Lala Lal Chand and *Pandit* Ram Bhaj Datt, Pleaders, for petitioner.

Maulvi Fazal Din, Pleader, for respondent.

JUDGMENT.

CLARK, C. J.—The 'Chajja' is in front of the 'Chaubara' which accused proposed to build; and his application of 20th September 1898, included both 'chaubara' and 'chajja' and Section 92 not section 95 Act XXI of 1891 is applicable, and as no orders were passed within 6 weeks of the order of 20th September, accused was justified in thinking that he had sanction to build. *3rd Decr.* 1900

It appears that the Committee has taken over the responsibility of making the plan and it does not help the Committee that the plan was not prepared by their servant till 14th November. Accused had with his application taken the proper steps to have the plan prepared.

The application for revision is rejected.

Application rejected.

REVISION SIDE. No. 14.

Before Mr. Justice Harris.

GOKAL CHAND,—PETITIONER.

Versus

CROWN—RESPONDENT

Case No. 844 of 1900.

Penal Code 1860, *Sections* 441 *and* 448 —*Criminal Trespass.*

Where the accused was found on the premises of a widow with whom he was prosecuting an intimacy and he was on those premises with her permission, it was held that he was not guilty of the offence under Section 448 Indian Penal Code.

Petition for revision under section 439 of the Criminal Procedure Code of the order of Captain B. C. Waterfield, Sub-Divisional Magistrate, Mardan, dated the 20th April 1900, modifying the order of Lala Nanak Chand, Magistrate, 2nd Class, Mardan, Peshawar District, dated the 31st March 1900, convicting the petitioner.

Sardar Gurcharan Singh, Advocate, for petitioner.

JUDGMENT.

25*th Augt.* 1900 HARRIS, J.—The facts found by the Courts below appear to be that accused was found on the premises of one *Mussammat* Rukman, a widowed daughter of one Har Das, with whom he was prosecuting an intimacy, and that he was on those premises with her permission.

The conviction under Section 448, Indian Penal Code, cannot be upheld. The offence punishable under that section rests upon the definition of criminal trespass in section 441, Indian Penal Code.

It is clear that *Mussammat* Rukman being a widow an intrigue with her was not an offence.

There cannot be said to be, on the above facts, any intention of intimidation, insult or annoyance, within the meaning of the definition, even if the premises are, as they appear not to be, those of Har Das.

I reverse the conviction and sentence and acquitting the accused, order the fine, if paid, to be refunded.

Conviction reversed.

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BY

DHARM DAS SURI,

VAKIL, HIGH COURT, N. W. P.,

AND

PLEADER, CHIEF COURT, PUNJAB.

OPINION :—

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